



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 19, 2022

IN THE MATTER OF:

Appeal Board No. 622446

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 622446, 622447 and 622448, the claimant appeals from the decisions of the Administrative Law Judge filed March 28, 2022, insofar as they sustained the initial determinations disqualifying the claimant from receiving benefits, effective May 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation benefits of \$1,090.00 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and Federal Pandemic Unemployment Compensation benefits of \$1,500.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$388.50 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances on behalf of the claimant and the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for a supermarket from April 21 through May 1, 2021, as a part-time baking associate. The employer's handbook includes policies stating that, in case of illness, an employee should telephone their department manager or store manager to report their absence at least two hours before the start of their shift, and failure to report to work or call in an

absence will be considered a voluntary quit. The claimant was aware of this written policy. The employer also had an unwritten policy requiring that an employee who is absent for two consecutive days of work must produce a doctor's note to excuse the absences. The store manager typically informs the employee of this requirement when the employee calls in the second absence.

On May 1, 2021, the claimant sprained her lower back while she was working. The claimant called out on May 3, saying her back hurt. The employer initiated a workers' compensation claim for the claimant. The claimant saw a doctor on May 6. The doctor told her to rest at home and take medication. The doctor did not clear her to return to work on that date. The employer never asked the claimant for medical documentation.

On May 9, 2021, the claimant claimed benefits for the week ending that day. The claimant was asked the reason she was no longer working for her most recent employer, and she was offered choices including lack of work, quit, unable to meet standards, fired, and strike. The claimant certified to Discharged/Let Go.

The claimant felt ready to return to work in early June. The claimant called on June 2 and spoke to a human resources coordinator about her paycheck and the status of her job. In the June 2 phone call, the HR coordinator told her that the employer had terminated her employment due to her not providing documentation regarding the reason she was out.

The claimant received \$2,590.00 in benefits.

OPINION: The credible evidence establishes that the claimant did not quit but was discharged by the employer because she did not provide medical documentation regarding the reason she was absent from work. Significantly, the claimant was never told to provide such documentation. At the hearing, the employer's witness testified that this requirement normally is communicated to an employee when the employee calls in a second consecutive absence. In the present case, however, there is no evidence that the claimant was scheduled to work on any specific day after May 3, 2021 or that the claimant called in a second consecutive absence. The claimant credibly testified that she was not told to provide a doctor's note, and the employer did not produce any first-hand testimony saying anything different. On this record, we do not find that the claimant quit her job on any identifiable date, or that she intended to do so. Rather, it was only when the claimant attempted to return to work

that she learned that the employer had separated her from employment. Therefore, we conclude that the claimant did not quit. Accordingly, we conclude that the claimant's employment ended under non-disqualifying circumstances, and the claimant is allowed benefits. We further conclude that, as the claimant is allowed benefits, she did not receive an overpayment of benefits.

The credible evidence further establishes that, when she certified for benefits on May 9, 2021, the claimant certified that she was no longer working for her most recent employer because she was Discharged/Let Go. The other choices offered to her included lack of work, quit, fired, and strike. None of the choices offered to her fit her circumstances of being temporarily out of work because of an on-the-job injury. Her certification to Discharged/Let Go was not unreasonable. Arguably, it was the choice that fit her circumstances best. Therefore, we find that her certification does not constitute a willful misrepresentation. Accordingly, we further conclude that the claimant is not subject to a forfeiture penalty or civil monetary penalty.

DECISION: The decisions of the Administrative Law Judge, insofar as appealed from, are reversed.

In Appeal Board Nos. 622446, 622447 and 622448, the initial determinations, disqualifying the claimant from receiving benefits, effective May 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation benefits of \$1,090.00 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and Federal Pandemic Unemployment Compensation benefits of \$1,500.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$388.50 on the basis that the claimant made a willful misrepresentation to obtain benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER